

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

CLAYTON MOORE,
Plaintiff,

v.

Case No. 11C0720

**WAUKESHA COUNTY SHERIFF and
LT. ACHENSON,**
Defendants.

ORDER

I previously assessed plaintiff an initial partial filing fee of \$17.57. Plaintiff now moves to waive the filing fee. He states that he no longer has the funds to pay it because he is in segregated confinement and is not working a prison job.

Under § 1915(b)(4), an inmate may not be prohibited from bringing a lawsuit if “the prisoner has no assets and no means by which to pay the initial partial filing fee.” However, plaintiff’s lack of income is not sufficient by itself to allow me to conclude that he lacks the means to pay the initial partial payment. See Newlin v. Helman, 123 F.3d 429, 435 (7th Cir. 1997) (“A prisoner with periodic income has ‘means’ even when he lacks ‘assets.’”). Were it otherwise, prisoners could simply avoid paying initial filing fees by spending all of their income on commissary items. The relevant inquiry includes plaintiff’s income over the previous six months. 28 U.S.C. § 1915 (a)(2). His prison trust account statement indicates an average monthly balance of \$94.63 and an average monthly deposit of \$29.85. This is sufficient income and resources to pay an initial fee of \$17.57. Therefore, I will deny the motion to waive the initial partial filing fee.

I will however grant plaintiff an extension of time of 45 days in which to pay. Failure to pay the initial partial filing fee on or before **October 10, 2011** will result in dismissal without prejudice of this action, pursuant to Fed. R. Civ. P. 41(b) and Civil L.R. 41(c) (E.D. Wis. 2010).

IT IS ORDERED that plaintiff's motion to waive the initial partial filing fee is **DENIED**.

IT IS FURTHER ORDERED that within 45 days of the date of this order, plaintiff shall forward to the Clerk of this Court the sum of \$17.57 as an initial partial filing fee in this action.

Dated at Milwaukee, Wisconsin, this 26th day of August 2011.

s/_____
LYNN ADELMAN
District Judge